(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Cr.A.No. 1255 of 1992

Released 12.3.98

Appellants: Accused (In Jail)

1. Khelawan alias Ramkhelawan, aged about 45 years, son of Shri Budhram Satnami;
2. Jawahar, aged about 24 years, son of Shri Khelwan;
3. Gawahi, aged about 19 years, son of Shri Khelwan;
4. Phulo Bai, aged about 40 years, wife of Shri Khelawan;
5. Sukhjiwan alias Sukhven, aged about 17 years, son of Shri Ramkhelawan;

All residents of village Newra, Police Station Kota, District Bilaspur, M.P.

EB

Released on 25.2.99

Released on 12.3.98

B

EB

R.L.D.R. 24-12-99

Released on 8.9.2000

Filed on 24-12-92 by Shri K. Pandey Advocate

13/92

versus

Respondent: The State of Madhya Pradesh

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973

XI-HC-22

(86)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1255/92 **सन्** 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1255/1992

Appellant : Khelawan @ Ramkhelawan & Others

Vs.

Respondent : State of Madhya Pradesh

Shri Arun Kochar, learned counsel for the appellant.

Shri U.N.S.Deo, learned Addl. Public Prosecutor and Shri Alok Bakshi, learned G.A. for the respondent/State.

ORAL JUDGMENT
(06.01.2006)

Per L.C. Bhadoo, J

At the outset Mr. U.N.S.Deo submitted a written communication to the effect that accused Khelawan has been released on probation on 12.03.98 while undergoing sentence in Central Jail, Raipur as per information received from Central Jail, Raipur, accused Gawahi has been released on probation on 12.03.98 as per information received from Central Jail, Raipur, accused Sukhjiwan has been released on probation on 08.09.2000 while undergoing sentence in Central Jail, Raipur as per information received from Central Jail Raipur and accused Jawahar has been released on probation on 25.02.99 while

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(87)

आदेश पत्रक

Cr.A.1253/92

मामला क्रमांक ..... सन् ~~200~~

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

undergoing sentence in Central Jail, Raipur as per information received from Central Jail, Raipur.

2) In view of above, the learned counsel for the accused/appellants does not want to prosecute this appeal for the above mentioned appellants. Therefore, their appeal is dismissed for non-prosecution.

3) As far as question of accused/appellant Phul Bai is concerned, learned counsel for the appellants argued the appeal on her behalf, therefore this appeal of Phul Bai is being decided on merits.

4) Accused Phul Bai has questioned the legality of the judgment of conviction and order of sentence dated 2.12.1992 passed by Sessions Judge, Bilaspur in S.T. No. 84/88 whereby learned Sessions Judge after holding accused/appellant Phul Bai and other accused persons guilty for commission of the offences punishable under Sections 147,148 and 302 read with Section 149 of the IPC sentenced them to undergo two years RI, three years RI and imprisonment for life respectively on all the counts. It was further directed that all the sentences would run concurrently.

5) The prosecution case in brief necessary for disposal of this appeal of accused/appellant Phul Bai is that on 10.11.1987 P.W.6 Shanti Bai, wife of deceased Mohit Ram lodged a report

[पीछे देखिये

(88)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 1255/92 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ex.P.9 in police station Kota to the effect that she along with her husband (since deceased) Mohit Ram at about 8.00 a.m. was going to their agricultural field, the accused persons were already present on the way and on account of animosity after forming the unlawful assembly and in furtherance of common object of unlawful assembly attacked her husband with Lathi and Tabbal. Accused Jawahar attacked Mohit Ram with Tabbal on his both hands and legs and other accused persons assaulted Mohit Ram with Lathi as a result of which Mohit Ram received injuries on his head both hands and legs. His hands and legs were broken. When Shanti Bai raised cries for help, Baswan, Kartik, Bhaiyya Ram, Jhanju, Malti Bai, Phul Bai and Mohan saw the incident from distance but ran away. Accused persons also fled up from the scene of occurrence. Station House Officer after registering FIR Ex.P.9 left for the scene of occurrence and prepared panchnama of the body. Thereafter body of Mohit Ram was sent for post mortem examination to Primary Health Centre, Lormi where Dr. D. Laaj P.W.22 conducted post mortem on the body of Mohit Ram and opined that cause of death was due to shock and hemorrhage as a result of ante mortem homicidal injuries over the head and other parts of the body. During investigation, Station House Officer also recovered Tabbal and Lathi at the instance of accused persons and sent the same to Forensic Science Laboratory for chemical examination from where examination reports Ex.P.42,

[पीछे देखिये

(89)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A./1255/92 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

43 and 44 were received and after completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur who in turn committed the case to Sessions Judge, Bilaspur for trial.

6) Prosecution in order to establish the charge against accused persons examined as many as 22 witnesses. Statements of the accused persons were also recorded under Section 313 of the Cr.P.C. by the Sessions Judge in which they denied the prosecution evidence appearing against them and stated that they have been falsely implicated in the crime. They produced three witnesses in defence. Learned Sessions Judge after hearing arguments of Public Prosecutor and counsel for the accused/appellants convicted and sentenced the accused persons as mentioned in paragraph one of this judgment.

7) We have heard Mr. Arun Kochar, counsel for the accused/appellant Phul Bai and Mr. U.N.S. Deo and Mr. Alok Bakshi on behalf of the State.

8) Learned counsel for the accused/appellant did not dispute the fact of homicidal nature of death of Mohit Ram. Apart from that from the evidence of P.W.22 Dr. D. Laaj and evidence of eyewitness P.W.6 Shanti Bai it is established that death of Mohit Ram was homicidal in nature.

[पीछे देखिये

(90)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 1255/92 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9) Shri U.N.S.Deo, learned Addl. Public Prosecutor and Shri Alok Bakshi, learned G.A. for the respondent/State supported the impugned judgment of the trial Court.

10) Now so far as question of involvement of accused/appellant Phul Bai in the crime in question is concerned, there is only one eyewitness to the incident namely P.W.6 Shanti Bai. In her evidence she has stated that when she along with her husband Mohit Ram was going to the field, accused/appellants Khelawan, Jawahar, Sukhjiwan and Phul Bai were present on the way, accused Jawahar was carrying Tabbal and others were carrying Lathi. Accused Jawahar assaulted her husband with Tabbal on his hand and legs and other accused persons assaulted with lathi as a result of which her husband received injuries on both hands and legs and blood started oozing out of the injuries. In the cross examination she stated that in the first phase accused Khelawan assaulted her husband on his hands and legs and other accused persons assaulted eight to ten times with Lathi. Phul Bai assaulted her husband with club. She assaulted her also six to seven times on her shoulders, arms and legs.

11) It is an admitted position that this witness was not medically examined in order to establish the allegation against Phul Bai that she assaulted this witness six to seven times with club whereas in report Ex.P.9 this fact was not mentioned by P.W.6

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1255/92 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that Phul Bai assaulted her with Lathi. In view of above, it appears that as far as Phul Bai is concerned this witness has improved the evidence in order to involve Phul Bai. Moreover in the FIR it has been mentioned that Phul Bai assaulted deceased Mohit Ram with Tutari (stick fitted with nail at its end) whereas in the Court evidence she has stated that she was carrying Lathi. Even the prosecution has tried to prove that Tutari was recovered from Phul Bai and to that effect evidence of witnesses P.W.15 Atma Ram and P.W.19 Nand Ram has been produced. P.W.15 Atma Ram has turned hostile and stated that no interrogation was conducted from Phul Bai in his presence and neither information was given by Phul Bai regarding Tutari nor it was recovered in his presence. P.W.19 Nand Ram has also stated in the cross examination that one child brought a small club and gave it to the Daroga and Daroga got his thumb mark affixed on the papers and no statement was recorded in his presence, therefore recovery of Tutari at the instance of Phul Bai becomes doubtful. Memorandum of Ex.P.21 has not been proved. Therefore recovery of Tutari at the instance of Phul Bai is not proved.

12) In view of the foregoing discussion we are of the considered view that the prosecution has not been able to establish the charges against Phul Bai beyond reasonable doubt, therefore, finding of the trial Court convicting Phul Bai under Section

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 1255/92 सन् ~~200~~

विरुद्ध

आदेश का क्रमांक आदेश दिनांक सहित	आदेश हस्ताक्षर सहित - 7 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

147,148 and 302/149 of the IPC cannot be sustained as the same is not based on legal clinching evidence.

13) In the result, the appeal of Phul Bai is allowed and her conviction and sentence under Sections 147, 148 and 302/149 of the IPC are set aside and she is acquitted of the charges. She is already on bail, therefore bail bonds are discharged.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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